



## 96TH GENERAL ASSEMBLY

### State of Illinois

### 2009 and 2010

### HB5789

Introduced 2/10/2010, by Rep. Michael K. Smith

#### SYNOPSIS AS INTRODUCED:

5 ILCS 140/1	from Ch. 116, par. 201
5 ILCS 140/3	from Ch. 116, par. 203
5 ILCS 140/7	from Ch. 116, par. 207
5 ILCS 140/9.5	
5 ILCS 140/11.5	

Amends the Freedom of Information Act. In the Act's intent provisions, removes references to the lower priority of a public body's financial obligations when considering requests. Provides that the 5-business day deadline by which a public body must act upon a records request is calculated in accordance with the Statute on Statutes and, with respect to School Code entities, certain provisions of the School Code relating to non-pupil attendance days. Permits a public body to seek review of a binding opinion of the Public Access Counselor in the county where the body's principal office is located (now, Cook County or Sangamon County). With respect to the disclosure exemption for personal information, removes the balancing test with respect to an unwarranted invasion of privacy. Exempts from disclosure evaluations and performance assessments of certified and non-certified school district employees, employment applications, and applications for appointments to fill vacancies in public offices. Requires (now, permits) a review when a public body seeks an advisory opinion from the Public Access Counselor. Provides for the effects of a public body seeking a binding written opinion of the Public Access Counselor. Effective immediately.

LRB096 19730 JAM 35146 b

1 AN ACT concerning government.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Freedom of Information Act is amended by  
5 changing Sections 1, 3, 7, 9.5, and 11.5 as follows:

6 (5 ILCS 140/1) (from Ch. 116, par. 201)

7 Sec. 1. Pursuant to the fundamental philosophy of the  
8 American constitutional form of government, it is declared to  
9 be the public policy of the State of Illinois that all persons  
10 are entitled to full and complete information regarding the  
11 affairs of government and the official acts and policies of  
12 those who represent them as public officials and public  
13 employees consistent with the terms of this Act. Such access is  
14 necessary to enable the people to fulfill their duties of  
15 discussing public issues fully and freely, making informed  
16 political judgments and monitoring government to ensure that it  
17 is being conducted in the public interest.

18 The General Assembly hereby declares that it is the public  
19 policy of the State of Illinois that access by all persons to  
20 public records promotes the transparency and accountability of  
21 public bodies at all levels of government. It is a fundamental  
22 obligation of government to operate openly and provide public  
23 records as expediently and efficiently as possible in

1 compliance with this Act.

2 This Act is not intended to cause an unwarranted invasion  
3 of personal privacy, nor to allow a request ~~the requests of a~~  
4 ~~commercial enterprise~~ to unduly burden public resources, or to  
5 disrupt the duly-undertaken work of any public body independent  
6 of the fulfillment of any of the fore-mentioned rights of the  
7 people to access to information.

8 This Act is not intended to create an obligation on the  
9 part of any public body to maintain or prepare any public  
10 record which was not maintained or prepared by such public body  
11 at the time when this Act becomes effective, except as  
12 otherwise required by applicable local, State or federal law.

13 Restraints on access to information, to the extent  
14 permitted by this Act, are limited exceptions to the principle  
15 that the people of this State have a right to full disclosure  
16 of information relating to the decisions, policies,  
17 procedures, rules, standards, and other aspects of government  
18 activity that affect the conduct of government and the lives of  
19 any or all of the people. The provisions of this Act shall be  
20 construed in accordance with this principle. This Act shall be  
21 construed to require disclosure of requested information as  
22 expediently and efficiently as possible and adherence to the  
23 deadlines established in this Act.

24 The General Assembly recognizes that this Act imposes  
25 fiscal obligations on public bodies to provide adequate staff  
26 and equipment to comply with its requirements. The General

1 Assembly declares that providing records in compliance with the  
2 requirements of this Act is a primary duty of public bodies to  
3 the people of this State, ~~and this Act should be construed to~~  
4 ~~this end, fiscal obligations notwithstanding.~~

5 The General Assembly further recognizes that technology  
6 may advance at a rate that outpaces its ability to address  
7 those advances legislatively. To the extent that this Act may  
8 not expressly apply to those technological advances, this Act  
9 should nonetheless be interpreted to further the declared  
10 policy of this Act that public records shall be made available  
11 upon request except when denial of access furthers the public  
12 policy underlying a specific exemption.

13 This Act shall be the exclusive State statute on freedom of  
14 information, except to the extent that other State statutes  
15 might create additional restrictions on disclosure of  
16 information or other laws in Illinois might create additional  
17 obligations for disclosure of information to the public.

18 (Source: P.A. 96-542, eff. 1-1-10.)

19 (5 ILCS 140/3) (from Ch. 116, par. 203)

20 Sec. 3. (a) Each public body shall make available to any  
21 person for inspection or copying all public records, except as  
22 otherwise provided in Section 7 of this Act. Notwithstanding  
23 any other law, a public body may not grant to any person or  
24 entity, whether by contract, license, or otherwise, the  
25 exclusive right to access and disseminate any public record as

1 defined in this Act.

2 (b) Subject to the fee provisions of Section 6 of this Act,  
3 each public body shall promptly provide, to any person who  
4 submits a request, a copy of any public record required to be  
5 disclosed by subsection (a) of this Section and shall certify  
6 such copy if so requested.

7 (c) Requests for inspection or copies shall be made in  
8 writing and directed to the public body. Written requests may  
9 be submitted to a public body via personal delivery, mail,  
10 telefax, or other means available to the public body. A public  
11 body may honor oral requests for inspection or copying. A  
12 public body may not require that a request be submitted on a  
13 standard form or require the requester to specify the purpose  
14 for a request, except to determine whether the records are  
15 requested for a commercial purpose or whether to grant a  
16 request for a fee waiver. All requests for inspection and  
17 copying received by a public body shall immediately be  
18 forwarded to its Freedom of Information officer or designee.

19 (d) Each public body shall, promptly, either comply with or  
20 deny a request for public records within 5 business days  
21 (calculated in accordance with Section 1.11 of the Statute on  
22 Statutes and, when the public body is organized or established  
23 pursuant to the School Code, excluding all non-pupil attendance  
24 days between the opening and closing days of the school term  
25 specified in the calendar established in accordance with  
26 Section 10-19 of the School Code) after its receipt of the

1 request, unless the time for response is properly extended  
2 under subsection (e) of this Section. Denial shall be in  
3 writing as provided in Section 9 of this Act. Failure to comply  
4 with a written request, extend the time for response, or deny a  
5 request within 5 business days after its receipt shall be  
6 considered a denial of the request. A public body that fails to  
7 respond to a request within the requisite periods in this  
8 Section but thereafter provides the requester with copies of  
9 the requested public records may not impose a fee for such  
10 copies. A public body that fails to respond to a request  
11 received may not treat the request as unduly burdensome under  
12 subsection (g).

13 (e) The time for response under this Section may be  
14 extended by the public body for not more than 5 business days  
15 from the original due date for any of the following reasons:

16 (i) the requested records are stored in whole or in  
17 part at other locations than the office having charge of  
18 the requested records;

19 (ii) the request requires the collection of a  
20 substantial number of specified records;

21 (iii) the request is couched in categorical terms and  
22 requires an extensive search for the records responsive to  
23 it;

24 (iv) the requested records have not been located in the  
25 course of routine search and additional efforts are being  
26 made to locate them;

1 (v) the requested records require examination and  
2 evaluation by personnel having the necessary competence  
3 and discretion to determine if they are exempt from  
4 disclosure under Section 7 of this Act or should be  
5 revealed only with appropriate deletions;

6 (vi) the request for records cannot be complied with by  
7 the public body within the time limits prescribed by  
8 paragraph (c) of this Section without unduly burdening or  
9 interfering with the operations of the public body;

10 (vii) there is a need for consultation, which shall be  
11 conducted with all practicable speed, with another public  
12 body or among two or more components of a public body  
13 having a substantial interest in the determination or in  
14 the subject matter of the request.

15 The person making a request and the public body may agree  
16 in writing to extend the time for compliance for a period to be  
17 determined by the parties. If the requester and the public body  
18 agree to extend the period for compliance, a failure by the  
19 public body to comply with any previous deadlines shall not be  
20 treated as a denial of the request for the records.

21 (f) When additional time is required for any of the above  
22 reasons, the public body shall, within 5 business days after  
23 receipt of the request, notify the person making the request of  
24 the reasons for the extension and the date by which the  
25 response will be forthcoming. Failure to respond within the  
26 time permitted for extension shall be considered a denial of

1 the request. A public body that fails to respond to a request  
2 within the time permitted for extension but thereafter provides  
3 the requester with copies of the requested public records may  
4 not impose a fee for those copies. A public body that requests  
5 an extension and subsequently fails to respond to the request  
6 may not treat the request as unduly burdensome under subsection  
7 (g).

8 (g) Requests calling for all records falling within a  
9 category shall be complied with unless compliance with the  
10 request would be unduly burdensome for the complying public  
11 body and there is no way to narrow the request and the burden  
12 on the public body outweighs the public interest in the  
13 information. Before invoking this exemption, the public body  
14 shall extend to the person making the request an opportunity to  
15 confer with it in an attempt to reduce the request to  
16 manageable proportions. If any body responds to a categorical  
17 request by stating that compliance would unduly burden its  
18 operation and the conditions described above are met, it shall  
19 do so in writing, specifying the reasons why it would be unduly  
20 burdensome and the extent to which compliance will so burden  
21 the operations of the public body. Such a response shall be  
22 treated as a denial of the request for information.

23 Repeated requests from the same person for the same records  
24 that are unchanged or identical to records previously provided  
25 or properly denied under this Act shall be deemed unduly  
26 burdensome under this provision.

1 (h) Each public body may promulgate rules and regulations  
2 in conformity with the provisions of this Section pertaining to  
3 the availability of records and procedures to be followed,  
4 including:

5 (i) the times and places where such records will be  
6 made available, and

7 (ii) the persons from whom such records may be  
8 obtained.

9 (i) The time periods for compliance or denial of a request  
10 to inspect or copy records set out in this Section shall not  
11 apply to requests for records made for a commercial purpose.  
12 Such requests shall be subject to the provisions of Section 3.1  
13 of this Act.

14 (Source: P.A. 96-542, eff. 1-1-10.)

15 (5 ILCS 140/7) (from Ch. 116, par. 207)

16 (Text of Section before amendment by P.A. 96-736)

17 Sec. 7. Exemptions.

18 (1) When a request is made to inspect or copy a public  
19 record that contains information that is exempt from disclosure  
20 under this Section, but also contains information that is not  
21 exempt from disclosure, the public body may elect to redact the  
22 information that is exempt. The public body shall make the  
23 remaining information available for inspection and copying.  
24 Subject to this requirement, the following shall be exempt from  
25 inspection and copying:

1           (a) Information specifically prohibited from  
2 disclosure by federal or State law or rules and regulations  
3 implementing federal or State law.

4           (b) Private information, unless disclosure is required  
5 by another provision of this Act, a State or federal law or  
6 a court order.

7           (b-5) Files, documents, and other data or databases  
8 maintained by one or more law enforcement agencies and  
9 specifically designed to provide information to one or more  
10 law enforcement agencies regarding the physical or mental  
11 status of one or more individual subjects.

12           (c) Personal information contained within public  
13 records, the disclosure of which would constitute a clearly  
14 unwarranted invasion of personal privacy, unless the  
15 disclosure is consented to in writing by the individual  
16 subjects of the information. "Unwarranted invasion of  
17 personal privacy" means the disclosure of information that  
18 is highly personal or objectionable to a reasonable person  
19 ~~and in which the subject's right to privacy outweighs any~~  
20 ~~legitimate public interest in obtaining the information.~~  
21 The disclosure of information that bears on the public  
22 duties of public employees and officials shall not be  
23 considered an invasion of personal privacy.

24           (d) Records in the possession of any public body  
25 created in the course of administrative enforcement  
26 proceedings, and any law enforcement or correctional

1 agency for law enforcement purposes, but only to the extent  
2 that disclosure would:

3 (i) interfere with pending or actually and  
4 reasonably contemplated law enforcement proceedings  
5 conducted by any law enforcement or correctional  
6 agency that is the recipient of the request;

7 (ii) interfere with active administrative  
8 enforcement proceedings conducted by the public body  
9 that is the recipient of the request;

10 (iii) create a substantial likelihood that a  
11 person will be deprived of a fair trial or an impartial  
12 hearing;

13 (iv) unavoidably disclose the identity of a  
14 confidential source, confidential information  
15 furnished only by the confidential source, or persons  
16 who file complaints with or provide information to  
17 administrative, investigative, law enforcement, or  
18 penal agencies; except that the identities of  
19 witnesses to traffic accidents, traffic accident  
20 reports, and rescue reports shall be provided by  
21 agencies of local government, except when disclosure  
22 would interfere with an active criminal investigation  
23 conducted by the agency that is the recipient of the  
24 request;

25 (v) disclose unique or specialized investigative  
26 techniques other than those generally used and known or

1 disclose internal documents of correctional agencies  
2 related to detection, observation or investigation of  
3 incidents of crime or misconduct, and disclosure would  
4 result in demonstrable harm to the agency or public  
5 body that is the recipient of the request;

6 (vi) endanger the life or physical safety of law  
7 enforcement personnel or any other person; or

8 (vii) obstruct an ongoing criminal investigation  
9 by the agency that is the recipient of the request.

10 (e) Records that relate to or affect the security of  
11 correctional institutions and detention facilities.

12 (f) Preliminary drafts, notes, recommendations,  
13 memoranda and other records in which opinions are  
14 expressed, or policies or actions are formulated, except  
15 that a specific record or relevant portion of a record  
16 shall not be exempt when the record is publicly cited and  
17 identified by the head of the public body. The exemption  
18 provided in this paragraph (f) extends to all those records  
19 of officers and agencies of the General Assembly that  
20 pertain to the preparation of legislative documents.

21 (g) Trade secrets and commercial or financial  
22 information obtained from a person or business where the  
23 trade secrets or commercial or financial information are  
24 furnished under a claim that they are proprietary,  
25 privileged or confidential, and that disclosure of the  
26 trade secrets or commercial or financial information would

1 cause competitive harm to the person or business, and only  
2 insofar as the claim directly applies to the records  
3 requested.

4 The information included under this exemption includes  
5 all ~~(i) All~~ trade secrets and commercial or financial  
6 information obtained by a public body, including a public  
7 pension fund, from a private equity fund or a privately  
8 held company within the investment portfolio of a private  
9 equity fund as a result of either investing or evaluating a  
10 potential investment of public funds in a private equity  
11 fund. The exemption contained in this item does not apply  
12 to the aggregate financial performance information of a  
13 private equity fund, nor to the identity of the fund's  
14 managers or general partners. The exemption contained in  
15 this item does not apply to the identity of a privately  
16 held company within the investment portfolio of a private  
17 equity fund, unless the disclosure of the identity of a  
18 privately held company may cause competitive harm.

19 Nothing contained in this paragraph (g) shall be  
20 construed to prevent a person or business from consenting  
21 to disclosure.

22 (h) Proposals and bids for any contract, grant, or  
23 agreement, including information which if it were  
24 disclosed would frustrate procurement or give an advantage  
25 to any person proposing to enter into a contractor  
26 agreement with the body, until an award or final selection

1 is made. Information prepared by or for the body in  
2 preparation of a bid solicitation shall be exempt until an  
3 award or final selection is made.

4 (i) Valuable formulae, computer geographic systems,  
5 designs, drawings and research data obtained or produced by  
6 any public body when disclosure could reasonably be  
7 expected to produce private gain or public loss. The  
8 exemption for "computer geographic systems" provided in  
9 this paragraph (i) does not extend to requests made by news  
10 media as defined in Section 2 of this Act when the  
11 requested information is not otherwise exempt and the only  
12 purpose of the request is to access and disseminate  
13 information regarding the health, safety, welfare, or  
14 legal rights of the general public.

15 (j) The following information pertaining to  
16 educational matters:

17 (i) test questions, scoring keys and other  
18 examination data used to administer an academic  
19 examination;

20 (ii) information received by a primary or  
21 secondary school, college, or university under its  
22 procedures for the evaluation of faculty members by  
23 their academic peers;

24 (iii) information concerning a school or  
25 university's adjudication of student disciplinary  
26 cases, but only to the extent that disclosure would

1 unavavoidably reveal the identity of the student; ~~and~~  
2 (iv) course materials or research materials used  
3 by faculty members; and -  
4 (v) evaluations and performance assessments of  
5 certified and non-certified school district employees.

6 (k) Architects' plans, engineers' technical  
7 submissions, and other construction related technical  
8 documents for projects not constructed or developed in  
9 whole or in part with public funds and the same for  
10 projects constructed or developed with public funds,  
11 including but not limited to power generating and  
12 distribution stations and other transmission and  
13 distribution facilities, water treatment facilities,  
14 airport facilities, sport stadiums, convention centers,  
15 and all government owned, operated, or occupied buildings,  
16 but only to the extent that disclosure would compromise  
17 security.

18 (l) Minutes of meetings of public bodies closed to the  
19 public as provided in the Open Meetings Act until the  
20 public body makes the minutes available to the public under  
21 Section 2.06 of the Open Meetings Act.

22 (m) Communications between a public body and an  
23 attorney or auditor representing the public body that would  
24 not be subject to discovery in litigation, and materials  
25 prepared or compiled by or for a public body in  
26 anticipation of a criminal, civil or administrative

1 proceeding upon the request of an attorney advising the  
2 public body, and materials prepared or compiled with  
3 respect to internal audits of public bodies.

4 (n) Records relating to a public body's adjudication of  
5 employee grievances or disciplinary cases; however, this  
6 exemption shall not extend to the final outcome of cases in  
7 which discipline is imposed.

8 (o) Administrative or technical information associated  
9 with automated data processing operations, including but  
10 not limited to software, operating protocols, computer  
11 program abstracts, file layouts, source listings, object  
12 modules, load modules, user guides, documentation  
13 pertaining to all logical and physical design of  
14 computerized systems, employee manuals, and any other  
15 information that, if disclosed, would jeopardize the  
16 security of the system or its data or the security of  
17 materials exempt under this Section.

18 (p) Records relating to collective negotiating matters  
19 between public bodies and their employees or  
20 representatives, except that any final contract or  
21 agreement shall be subject to inspection and copying.

22 (q) Test questions, scoring keys, and other  
23 examination data used to determine the qualifications of an  
24 applicant for a license or employment.

25 (r) The records, documents, and information relating  
26 to real estate purchase negotiations until those

1 negotiations have been completed or otherwise terminated.  
2 With regard to a parcel involved in a pending or actually  
3 and reasonably contemplated eminent domain proceeding  
4 under the Eminent Domain Act, records, documents and  
5 information relating to that parcel shall be exempt except  
6 as may be allowed under discovery rules adopted by the  
7 Illinois Supreme Court. The records, documents and  
8 information relating to a real estate sale shall be exempt  
9 until a sale is consummated.

10 (s) Any and all proprietary information and records  
11 related to the operation of an intergovernmental risk  
12 management association or self-insurance pool or jointly  
13 self-administered health and accident cooperative or pool.  
14 Insurance or self insurance (including any  
15 intergovernmental risk management association or self  
16 insurance pool) claims, loss or risk management  
17 information, records, data, advice or communications.

18 (t) Information contained in or related to  
19 examination, operating, or condition reports prepared by,  
20 on behalf of, or for the use of a public body responsible  
21 for the regulation or supervision of financial  
22 institutions or insurance companies, unless disclosure is  
23 otherwise required by State law.

24 (u) Information that would disclose or might lead to  
25 the disclosure of secret or confidential information,  
26 codes, algorithms, programs, or private keys intended to be

1 used to create electronic or digital signatures under the  
2 Electronic Commerce Security Act.

3 (v) Vulnerability assessments, security measures, and  
4 response policies or plans that are designed to identify,  
5 prevent, or respond to potential attacks upon a community's  
6 population or systems, facilities, or installations, the  
7 destruction or contamination of which would constitute a  
8 clear and present danger to the health or safety of the  
9 community, but only to the extent that disclosure could  
10 reasonably be expected to jeopardize the effectiveness of  
11 the measures or the safety of the personnel who implement  
12 them or the public. Information exempt under this item may  
13 include such things as details pertaining to the  
14 mobilization or deployment of personnel or equipment, to  
15 the operation of communication systems or protocols, or to  
16 tactical operations.

17 (w) Employment applications and, when the public body  
18 has the authority to fill a vacancy in a public office by  
19 appointment, applications for appointments to fill  
20 vacancies in a public office.

21 (x) Maps and other records regarding the location or  
22 security of generation, transmission, distribution,  
23 storage, gathering, treatment, or switching facilities  
24 owned by a utility, by a power generator, or by the  
25 Illinois Power Agency.

26 (y) Information contained in or related to proposals,

1 bids, or negotiations related to electric power  
2 procurement under Section 1-75 of the Illinois Power Agency  
3 Act and Section 16-111.5 of the Public Utilities Act that  
4 is determined to be confidential and proprietary by the  
5 Illinois Power Agency or by the Illinois Commerce  
6 Commission.

7 (z) ~~(tt)~~ Information about students exempted from  
8 disclosure under Sections 10-20.38 or 34-18.29 of the  
9 School Code, and information about undergraduate students  
10 enrolled at an institution of higher education exempted  
11 from disclosure under Section 25 of the Illinois Credit  
12 Card Marketing Act of 2009.

13 (2) A public record that is not in the possession of a  
14 public body but is in the possession of a party with whom the  
15 agency has contracted to perform a governmental function on  
16 behalf of the public body, and that directly relates to the  
17 governmental function and is not otherwise exempt under this  
18 Act, shall be considered a public record of the public body,  
19 for purposes of this Act.

20 (3) This Section does not authorize withholding of  
21 information or limit the availability of records to the public,  
22 except as stated in this Section or otherwise provided in this  
23 Act.

24 (Source: P.A. 95-331, eff. 8-21-07; 95-481, eff. 8-28-07;  
25 95-941, eff. 8-29-08; 95-988, eff. 6-1-09; 96-261, eff. 1-1-10;  
26 96-328, eff. 8-11-09; 96-542, eff. 1-1-10; 96-558, eff. 1-1-10;

1 revised 9-25-09.)

2 (Text of Section after amendment by P.A. 96-736)

3 Sec. 7. Exemptions.

4 (1) When a request is made to inspect or copy a public  
5 record that contains information that is exempt from disclosure  
6 under this Section, but also contains information that is not  
7 exempt from disclosure, the public body may elect to redact the  
8 information that is exempt. The public body shall make the  
9 remaining information available for inspection and copying.  
10 Subject to this requirement, the following shall be exempt from  
11 inspection and copying:

12 (a) Information specifically prohibited from  
13 disclosure by federal or State law or rules and regulations  
14 implementing federal or State law.

15 (b) Private information, unless disclosure is required  
16 by another provision of this Act, a State or federal law or  
17 a court order.

18 (b-5) Files, documents, and other data or databases  
19 maintained by one or more law enforcement agencies and  
20 specifically designed to provide information to one or more  
21 law enforcement agencies regarding the physical or mental  
22 status of one or more individual subjects.

23 (c) Personal information contained within public  
24 records, the disclosure of which would constitute a clearly  
25 unwarranted invasion of personal privacy, unless the

1 disclosure is consented to in writing by the individual  
2 subjects of the information. "Unwarranted invasion of  
3 personal privacy" means the disclosure of information that  
4 is highly personal or objectionable to a reasonable person  
5 ~~and in which the subject's right to privacy outweighs any~~  
6 ~~legitimate public interest in obtaining the information.~~  
7 The disclosure of information that bears on the public  
8 duties of public employees and officials shall not be  
9 considered an invasion of personal privacy.

10 (d) Records in the possession of any public body  
11 created in the course of administrative enforcement  
12 proceedings, and any law enforcement or correctional  
13 agency for law enforcement purposes, but only to the extent  
14 that disclosure would:

15 (i) interfere with pending or actually and  
16 reasonably contemplated law enforcement proceedings  
17 conducted by any law enforcement or correctional  
18 agency that is the recipient of the request;

19 (ii) interfere with active administrative  
20 enforcement proceedings conducted by the public body  
21 that is the recipient of the request;

22 (iii) create a substantial likelihood that a  
23 person will be deprived of a fair trial or an impartial  
24 hearing;

25 (iv) unavoidably disclose the identity of a  
26 confidential source, confidential information

1 furnished only by the confidential source, or persons  
2 who file complaints with or provide information to  
3 administrative, investigative, law enforcement, or  
4 penal agencies; except that the identities of  
5 witnesses to traffic accidents, traffic accident  
6 reports, and rescue reports shall be provided by  
7 agencies of local government, except when disclosure  
8 would interfere with an active criminal investigation  
9 conducted by the agency that is the recipient of the  
10 request;

11 (v) disclose unique or specialized investigative  
12 techniques other than those generally used and known or  
13 disclose internal documents of correctional agencies  
14 related to detection, observation or investigation of  
15 incidents of crime or misconduct, and disclosure would  
16 result in demonstrable harm to the agency or public  
17 body that is the recipient of the request;

18 (vi) endanger the life or physical safety of law  
19 enforcement personnel or any other person; or

20 (vii) obstruct an ongoing criminal investigation  
21 by the agency that is the recipient of the request.

22 (e) Records that relate to or affect the security of  
23 correctional institutions and detention facilities.

24 (f) Preliminary drafts, notes, recommendations,  
25 memoranda and other records in which opinions are  
26 expressed, or policies or actions are formulated, except

1           that a specific record or relevant portion of a record  
2           shall not be exempt when the record is publicly cited and  
3           identified by the head of the public body. The exemption  
4           provided in this paragraph (f) extends to all those records  
5           of officers and agencies of the General Assembly that  
6           pertain to the preparation of legislative documents.

7           (g) Trade secrets and commercial or financial  
8           information obtained from a person or business where the  
9           trade secrets or commercial or financial information are  
10          furnished under a claim that they are proprietary,  
11          privileged or confidential, and that disclosure of the  
12          trade secrets or commercial or financial information would  
13          cause competitive harm to the person or business, and only  
14          insofar as the claim directly applies to the records  
15          requested.

16          The information included under this exemption includes  
17          all ~~(i) All~~ trade secrets and commercial or financial  
18          information obtained by a public body, including a public  
19          pension fund, from a private equity fund or a privately  
20          held company within the investment portfolio of a private  
21          equity fund as a result of either investing or evaluating a  
22          potential investment of public funds in a private equity  
23          fund. The exemption contained in this item does not apply  
24          to the aggregate financial performance information of a  
25          private equity fund, nor to the identity of the fund's  
26          managers or general partners. The exemption contained in

1           this item does not apply to the identity of a privately  
2           held company within the investment portfolio of a private  
3           equity fund, unless the disclosure of the identity of a  
4           privately held company may cause competitive harm.

5           Nothing contained in this paragraph (g) shall be  
6           construed to prevent a person or business from consenting  
7           to disclosure.

8           (h) Proposals and bids for any contract, grant, or  
9           agreement, including information which if it were  
10          disclosed would frustrate procurement or give an advantage  
11          to any person proposing to enter into a contractor  
12          agreement with the body, until an award or final selection  
13          is made. Information prepared by or for the body in  
14          preparation of a bid solicitation shall be exempt until an  
15          award or final selection is made.

16          (i) Valuable formulae, computer geographic systems,  
17          designs, drawings and research data obtained or produced by  
18          any public body when disclosure could reasonably be  
19          expected to produce private gain or public loss. The  
20          exemption for "computer geographic systems" provided in  
21          this paragraph (i) does not extend to requests made by news  
22          media as defined in Section 2 of this Act when the  
23          requested information is not otherwise exempt and the only  
24          purpose of the request is to access and disseminate  
25          information regarding the health, safety, welfare, or  
26          legal rights of the general public.

1 (j) The following information pertaining to  
2 educational matters:

3 (i) test questions, scoring keys and other  
4 examination data used to administer an academic  
5 examination;

6 (ii) information received by a primary or  
7 secondary school, college, or university under its  
8 procedures for the evaluation of faculty members by  
9 their academic peers;

10 (iii) information concerning a school or  
11 university's adjudication of student disciplinary  
12 cases, but only to the extent that disclosure would  
13 unavoidably reveal the identity of the student; ~~and~~

14 (iv) course materials or research materials used  
15 by faculty members; and -

16 (v) evaluations and performance assessments of  
17 certified and non-certified school district employees.

18 (k) Architects' plans, engineers' technical  
19 submissions, and other construction related technical  
20 documents for projects not constructed or developed in  
21 whole or in part with public funds and the same for  
22 projects constructed or developed with public funds,  
23 including but not limited to power generating and  
24 distribution stations and other transmission and  
25 distribution facilities, water treatment facilities,  
26 airport facilities, sport stadiums, convention centers,

1 and all government owned, operated, or occupied buildings,  
2 but only to the extent that disclosure would compromise  
3 security.

4 (l) Minutes of meetings of public bodies closed to the  
5 public as provided in the Open Meetings Act until the  
6 public body makes the minutes available to the public under  
7 Section 2.06 of the Open Meetings Act.

8 (m) Communications between a public body and an  
9 attorney or auditor representing the public body that would  
10 not be subject to discovery in litigation, and materials  
11 prepared or compiled by or for a public body in  
12 anticipation of a criminal, civil or administrative  
13 proceeding upon the request of an attorney advising the  
14 public body, and materials prepared or compiled with  
15 respect to internal audits of public bodies.

16 (n) Records relating to a public body's adjudication of  
17 employee grievances or disciplinary cases; however, this  
18 exemption shall not extend to the final outcome of cases in  
19 which discipline is imposed.

20 (o) Administrative or technical information associated  
21 with automated data processing operations, including but  
22 not limited to software, operating protocols, computer  
23 program abstracts, file layouts, source listings, object  
24 modules, load modules, user guides, documentation  
25 pertaining to all logical and physical design of  
26 computerized systems, employee manuals, and any other

1 information that, if disclosed, would jeopardize the  
2 security of the system or its data or the security of  
3 materials exempt under this Section.

4 (p) Records relating to collective negotiating matters  
5 between public bodies and their employees or  
6 representatives, except that any final contract or  
7 agreement shall be subject to inspection and copying.

8 (q) Test questions, scoring keys, and other  
9 examination data used to determine the qualifications of an  
10 applicant for a license or employment.

11 (r) The records, documents, and information relating  
12 to real estate purchase negotiations until those  
13 negotiations have been completed or otherwise terminated.  
14 With regard to a parcel involved in a pending or actually  
15 and reasonably contemplated eminent domain proceeding  
16 under the Eminent Domain Act, records, documents and  
17 information relating to that parcel shall be exempt except  
18 as may be allowed under discovery rules adopted by the  
19 Illinois Supreme Court. The records, documents and  
20 information relating to a real estate sale shall be exempt  
21 until a sale is consummated.

22 (s) Any and all proprietary information and records  
23 related to the operation of an intergovernmental risk  
24 management association or self-insurance pool or jointly  
25 self-administered health and accident cooperative or pool.  
26 Insurance or self insurance (including any

1           intergovernmental risk management association or self  
2           insurance pool) claims, loss or risk management  
3           information, records, data, advice or communications.

4           (t) Information contained in or related to  
5           examination, operating, or condition reports prepared by,  
6           on behalf of, or for the use of a public body responsible  
7           for the regulation or supervision of financial  
8           institutions or insurance companies, unless disclosure is  
9           otherwise required by State law.

10          (u) Information that would disclose or might lead to  
11          the disclosure of secret or confidential information,  
12          codes, algorithms, programs, or private keys intended to be  
13          used to create electronic or digital signatures under the  
14          Electronic Commerce Security Act.

15          (v) Vulnerability assessments, security measures, and  
16          response policies or plans that are designed to identify,  
17          prevent, or respond to potential attacks upon a community's  
18          population or systems, facilities, or installations, the  
19          destruction or contamination of which would constitute a  
20          clear and present danger to the health or safety of the  
21          community, but only to the extent that disclosure could  
22          reasonably be expected to jeopardize the effectiveness of  
23          the measures or the safety of the personnel who implement  
24          them or the public. Information exempt under this item may  
25          include such things as details pertaining to the  
26          mobilization or deployment of personnel or equipment, to

1 the operation of communication systems or protocols, or to  
2 tactical operations.

3 (w) Employment applications and, when the public body  
4 has the authority to fill a vacancy in a public office by  
5 appointment, applications for appointments to fill  
6 vacancies in a public office.

7 (x) Maps and other records regarding the location or  
8 security of generation, transmission, distribution,  
9 storage, gathering, treatment, or switching facilities  
10 owned by a utility, by a power generator, or by the  
11 Illinois Power Agency.

12 (y) Information contained in or related to proposals,  
13 bids, or negotiations related to electric power  
14 procurement under Section 1-75 of the Illinois Power Agency  
15 Act and Section 16-111.5 of the Public Utilities Act that  
16 is determined to be confidential and proprietary by the  
17 Illinois Power Agency or by the Illinois Commerce  
18 Commission.

19 (z) ~~(tt)~~ Information about students exempted from  
20 disclosure under Sections 10-20.38 or 34-18.29 of the  
21 School Code, and information about undergraduate students  
22 enrolled at an institution of higher education exempted  
23 from disclosure under Section 25 of the Illinois Credit  
24 Card Marketing Act of 2009.

25 (aa) ~~(tt)~~ Information the disclosure of which is  
26 exempted under the Viatical Settlements Act of 2009.

1           (2) A public record that is not in the possession of a  
2 public body but is in the possession of a party with whom the  
3 agency has contracted to perform a governmental function on  
4 behalf of the public body, and that directly relates to the  
5 governmental function and is not otherwise exempt under this  
6 Act, shall be considered a public record of the public body,  
7 for purposes of this Act.

8           (3) This Section does not authorize withholding of  
9 information or limit the availability of records to the public,  
10 except as stated in this Section or otherwise provided in this  
11 Act.

12           (Source: P.A. 95-331, eff. 8-21-07; 95-481, eff. 8-28-07;  
13 95-941, eff. 8-29-08; 95-988, eff. 6-1-09; 96-261, eff. 1-1-10;  
14 96-328, eff. 8-11-09; 96-542, eff. 1-1-10; 96-558, eff. 1-1-10;  
15 96-736, eff. 7-1-10; revised 9-25-09.)

16           (5 ILCS 140/9.5)

17           Sec. 9.5. Public Access Counselor; opinions.

18           (a) A person whose request to inspect or copy a public  
19 record is denied by a public body, except the General Assembly  
20 and committees, commissions, and agencies thereof, may file a  
21 request for review with the Public Access Counselor established  
22 in the Office of the Attorney General not later than 60 days  
23 after the date of the final denial. The request for review must  
24 be in writing, signed by the requester, and include (i) a copy  
25 of the request for access to records and (ii) any responses

1 from the public body.

2 (b) A public body that receives a request for records, and  
3 asserts that the records are exempt under subsection (1)(c) or  
4 (1)(f) of Section 7 of this Act, shall, within the time periods  
5 provided for responding to a request, provide written notice to  
6 the requester and the Public Access Counselor of its intent to  
7 deny the request in whole or in part. The notice shall include:  
8 (i) a copy of the request for access to records; (ii) the  
9 proposed response from the public body; and (iii) a detailed  
10 summary of the public body's basis for asserting the exemption.  
11 Upon receipt of a notice of intent to deny from a public body,  
12 the Public Access Counselor shall determine whether further  
13 inquiry is warranted. Within 5 working days after receipt of  
14 the notice of intent to deny, the Public Access Counselor shall  
15 notify the public body and the requester whether further  
16 inquiry is warranted. If the Public Access Counselor determines  
17 that further inquiry is warranted, the procedures set out in  
18 this Section regarding the review of denials, including the  
19 production of documents, shall also be applicable to the  
20 inquiry and resolution of a notice of intent to deny from a  
21 public body. Times for response or compliance by the public  
22 body under Section 3 of this Act shall be tolled until the  
23 Public Access Counselor concludes his or her inquiry.

24 (c) Upon receipt of a request for review, the Public Access  
25 Counselor shall determine whether further action is warranted.  
26 If the Public Access Counselor determines that the alleged

1 violation is unfounded, he or she shall so advise the requester  
2 and the public body and no further action shall be undertaken.  
3 In all other cases, the Public Access Counselor shall forward a  
4 copy of the request for review to the public body within 7  
5 working days after receipt and shall specify the records or  
6 other documents that the public body shall furnish to  
7 facilitate the review. Within 7 working days after receipt of  
8 the request for review, the public body shall provide copies of  
9 records requested and shall otherwise fully cooperate with the  
10 Public Access Counselor. If a public body fails to furnish  
11 specified records pursuant to this Section, or if otherwise  
12 necessary, the Attorney General may issue a subpoena to any  
13 person or public body having knowledge of or records pertaining  
14 to a request for review of a denial of access to records under  
15 the Act. To the extent that records or documents produced by a  
16 public body contain information that is claimed to be exempt  
17 from disclosure under Section 7 of this Act, the Public Access  
18 Counselor shall not further disclose that information.

19 (d) Within 7 working days after it receives a copy of a  
20 request for review and request for production of records from  
21 the Public Access Counselor, the public body may, but is not  
22 required to, answer the allegations of the request for review.  
23 The answer may take the form of a letter, brief, or memorandum.  
24 The Public Access Counselor shall forward a copy of the answer  
25 to the person submitting the request for review, with any  
26 alleged confidential information to which the request pertains

1 redacted from the copy. The requester may, but is not required  
2 to, respond in writing to the answer within 7 working days and  
3 shall provide a copy of the response to the public body.

4 (e) In addition to the request for review, and the answer  
5 and the response thereto, if any, a requester or a public body  
6 may furnish affidavits or records concerning any matter germane  
7 to the review.

8 (f) Unless the Public Access Counselor extends the time by  
9 no more than 21 business days by sending written notice to the  
10 requester and the public body that includes a statement of the  
11 reasons for the extension in the notice, or decides to address  
12 the matter without the issuance of a binding opinion, the  
13 Attorney General shall examine the issues and the records,  
14 shall make findings of fact and conclusions of law, and shall  
15 issue to the requester and the public body an opinion in  
16 response to the request for review within 60 days after its  
17 receipt. The opinion shall be binding upon both the requester  
18 and the public body, subject to administrative review under  
19 Section 11.5.

20 In responding to any request under this Section 9.5, the  
21 Attorney General may exercise his or her discretion and choose  
22 to resolve a request for review by mediation or by a means  
23 other than the issuance of a binding opinion. The decision not  
24 to issue a binding opinion shall not be reviewable.

25 Upon receipt of a binding opinion concluding that a  
26 violation of this Act has occurred, the public body shall

1 either take necessary action immediately to comply with the  
2 directive of the opinion or shall initiate administrative  
3 review under Section 11.5. If the opinion concludes that no  
4 violation of the Act has occurred, the requester may initiate  
5 administrative review under Section 11.5.

6 A public body that discloses records in accordance with an  
7 opinion of the Attorney General is immune from all liabilities  
8 by reason thereof and shall not be liable for penalties under  
9 this Act.

10 (g) If the requester files suit under Section 11 with  
11 respect to the same denial that is the subject of a pending  
12 request for review, the requester shall notify the Public  
13 Access Counselor, and the Public Access Counselor shall take no  
14 further action with respect to the request for review and shall  
15 so notify the public body.

16 (h) The Attorney General may also issue advisory opinions  
17 to public bodies regarding compliance with this Act. A review  
18 shall ~~may~~ be initiated upon receipt of a written request from  
19 the head of the public body or its attorney, which shall  
20 contain sufficient accurate facts from which a determination  
21 can be made. The Public Access Counselor may request additional  
22 information from the public body in order to assist in the  
23 review. A public body that relies in good faith on an advisory  
24 opinion of the Attorney General in responding to a request is  
25 not liable for penalties under this Act, so long as the facts  
26 upon which the opinion is based have been fully and fairly

1 disclosed to the Public Access Counselor.

2 (i) If a public body requests an opinion from the Public  
3 Access Counselor, the public body shall notify the requester in  
4 writing by or before the deadline for response to the request.  
5 The notification shall stop the running of the time for  
6 response until the public body receives a binding written  
7 opinion from the Public Access Counselor that identifies  
8 whether or not the requested information must be provided and  
9 to what extent that information shall be disclosed. Upon  
10 receipt of such an opinion from the Public Access Counselor,  
11 the public body shall have 5 days to comply.

12 (j) In the event an action is brought before the Public  
13 Access Counselor against a public body for failure to comply  
14 with this Act after the public body has properly sought an  
15 opinion from the Public Access Counselor, the Public Access  
16 Counselor's inquiry shall be limited to whether or not the  
17 public body complied with the Public Access Counselor's ruling.

18 (Source: P.A. 96-542, eff. 1-1-10.)

19 (5 ILCS 140/11.5)

20 Sec. 11.5. Administrative review. A binding opinion issued  
21 by the Attorney General shall be considered a final decision of  
22 an administrative agency, for purposes of administrative  
23 review under the Administrative Review Law (735 ILCS 5/Art.  
24 III). An action for administrative review of a binding opinion  
25 of the Attorney General shall be commenced in the county where

1 the principal office of the public body is located Cook or  
2 Sangamon County. An advisory opinion issued to a public body  
3 shall not be considered a final decision of the Attorney  
4 General for purposes of this Section.  
5 (Source: P.A. 96-542, eff. 1-1-10.)

6 Section 95. No acceleration or delay. Where this Act makes  
7 changes in a statute that is represented in this Act by text  
8 that is not yet or no longer in effect (for example, a Section  
9 represented by multiple versions), the use of that text does  
10 not accelerate or delay the taking effect of (i) the changes  
11 made by this Act or (ii) provisions derived from any other  
12 Public Act.

13 Section 99. Effective date. This Act takes effect upon  
14 becoming law.